

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-7143**

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WILLIAM DAVID DUNN, JR.,

Petitioner - Appellant,

versus

BONNIE BOYETTE,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (CA-03-565-5-BO)

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Submitted: October 18, 2004

Decided: November 8, 2004

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Before MICHAEL and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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William David Dunn, Jr., Appellant Pro Se. Sandra Wallace-Smith, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

William David Dunn, Jr., seeks to appeal the district court's order denying as untimely his petition filed under 28 U.S.C. § 2254 (2000). An appeal may not be taken from the final order in a habeas corpus proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c) (2000). A prisoner satisfies this standard by demonstrating both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right' and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)); see Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). We have independently reviewed the record and conclude that Dunn has not made the requisite showing because his § 2254 petition was indeed untimely. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED